

MINUTES
NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE
SECOND MEETING: AUGUST 26-28, 1992
LAKEWOOD, CO

The second meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Dr. Francis P. McManamon, Departmental Consulting Archeologist, at 9:18 a.m, Wednesday, August 26, 1992, in the City Lights Room of the Denver Sheraton West, Lakewood CO. The following Review Committee members, staff, and others were in attendance:

Members of the Review Committee:

Ms. Rachel Craig
Dr. Jonathan Haas
Mr. Dan Monroe
Ms. Tessie Naranjo
Dr. Martin E. Sullivan
Dr. Phillip L. Walker

Members absent:

Mr. William Tallbull

National Park Service staff present:

Dr. Francis McManamon, Departmental Consulting Archeologist
Dr. C. Timothy McKeown, NAGPRA Program Leader
Mr. Hugh (Sam) Ball, Archeologist

Other National Park Service personnel present:

Mr. Robert Baker, Rocky Mountain Regional Director
Dr. William Butler, Rocky Mountain Regional Office
Mr. Edward Natay, Southwest Regional Office
Dr. David Ruppert, Rocky Mountain Regional Office
Dr. Larry Van Horn, Denver Service Center
Mr. Frank Williss, Denver Service Center

The following others were in attendance:

Ms. Nancy Blomberg, Denver Art Museum
Ms. Suzanne Casey, Colorado State Museum
Dr. Susan Collins, Colorado Historical Society
Dr. Jane Day, Denver Museum of Natural History
Dr. Alan Downer, Navajo Nation
Mr. Fred Fest, Peabody Coal Company
Dr. Edward Friedman, Bureau of Reclamation
Ms. Carol Gleichman, Advisory Council on Historic Preservation
Ms. Kristine Haglund, Denver Museum of Natural History
Mr. Jon Halverson, Denver Museum of Natural History

Ms. Joyce Herold, Denver Museum of Natural History
Ms. Claudia Nissley, Advisory Council on Historic Preservation
Mr. Stanley Pollack, Navajo Nation
Mr. Alan Stanfill, Advisory Council on Historic Preservation
Dr. Brit Storey, Bureau of Reclamation
Mr. Jack Trope, American Association for Indian Affairs
Ms. Teresa Wilkins, Colorado State Museum
Ms. Cynthia Wood, Denver Museum of Natural History

Dr. McManamon advised the Committee that notice of the meeting had been published in the July 21, 1992 *Federal Register* and confirmed that a quorum of members was present. He explained that Mr. Tallbull was unable to attend due to illness. Dr. McManamon then asked Ms. Craig to offer an invocation.

Rocky Mountain Regional Director

After the invocation, Dr. McManamon introduced Mr. Robert Baker, Director of the NPS Rocky Mountain Region. Mr. Baker explained that while he had served nineteen years as the regional director (in the NPS Southeast Region), he was new to the Rocky Mountain Region. His recent trips to parks in the six states of the Rocky Mountain Region had confirmed his thought that NPS properties preserve both the glories and the tragedies of the nation's heritage. In his recent travels, Mr. Baker had met with many Native American groups to discuss their perspectives on various parks. He looked to the Committee for additional guidance in protecting the region's, and the nation's, heritage. Mr. Baker also announced his intent to establish an Office of Indian Affairs within the regional office. After his presentation Mr. Monroe thanked Mr. Baker for taking time from his busy schedule to attend the Committee meeting.

Review of the Agenda

Dr. McManamon reviewed the meeting agenda. Major items included: election of a Committee Chair, consideration of the draft Memorandum on Written Inventories and Summaries, discussion of major policy issues related to the regulations, development of dispute resolution procedures, and consideration of the request for intervention from *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*.

Chair Election

The Committee discussed election of the Chair. It was decided to delay the election until the last day of the meeting to allow the members to get better acquainted. Dr. McManamon agreed to continue to serve as meeting facilitator until the new Chair was elected.

Memorandum on Written Summaries and Inventories

Dr. McManamon introduced discussion of the Memorandum on Written Summaries and Inventories. The Committee had originally requested preparation of the document at their first meeting in Washington D.C. The Archeological Assistance Division of the National Park Service drafted the memorandum using the appropriate sections of Draft 3 and the comments which were received on that document as models. The Committee focused their discussion on definitions and procedures outlined in the memorandum.

Lineal Descendants

Dr. Haas expressed his concern over the definition of lineal descendant. He recognized that Native Americans define lineal descendants differently than the way he does. He regretted that Mr. Tallbull was not present for the discussion because the Tallbull pipe was one of the best examples of the difficulties in identifying lineal descendants. The Tallbull pipe is at the Smithsonian Institution and there has been a request for its return. There are about 65 living descendants of the person who originally owned the pipe, including Committee Member Mr. Bill Tallbull. However, the Cheyenne reckon the ownership of objects such as pipes and medicine bundles through the youngest male of the family, so of the 65 initially identified descendants, only two are probably proper descendants.

Dr. Haas stated that notification of lineal descendants presents museums with a problem. He commented that requiring a museum, which might have collections from 200 different Indian Tribes, to notify all lineal descendants would be a multi-million dollar task. As an example, he recounted that when the Field Museum of Natural History repatriated human remains to the Blackfeet, Tribal officials asked if there was any information about individuals. There was none. The Tribal officials then asked about geography, and the museum responded that some of the remains had been shipped from a particular railroad station. The Tribal officials knew who had lived in that particular area and agreed to pass the information on to the descendants. In conclusion, Dr. Haas thought that Draft 3 placed a far greater burden on museums than is inherent in the statutory language. Dr. Sullivan added that Section 6 of the statute, which deals with summaries, does not contain the phrase "lineal descendant."

Dr. McManamon explained that the term was included in recognition of the priority lineal descendants have in repatriations. However, he added, a museum obviously cannot provide information that it does not have. Dr. McKeown suggested that the museum be required to convey the collectors' names and other pertinent information related to the original collection of specific items to culturally affiliated Indian Tribes. The Tribes would be best able to identify lineal descendants.

Ms. Craig offered that in her area it was easy for Native Alaskan groups to find out who was related to someone because many of the villages were beginning to document their family trees. Even villages that were relocated by the BIA, for example, can call back to their original area to obtain information. Having the museum provide what information it has to Tribes would fulfill the Congressional intent of getting museums and Indians working together.

Dr. McManamon summarized the Committee's recommendation to drop references to museums' need to identify lineal descendants in the introduction and in the sections on summaries and inventories. Dr. Walker added that there should be a section outlining the kind of process discussed by Dr. Haas and Ms. Craig where museums and Indian Tribes cooperate in identifying lineal descendants.

Indian Tribe

Dr. Walker pointed out that in California there is a great deal of concern about how the term "Indian Tribe" will be defined in the regulations. Dr. Haas indicated that his understanding of legislative intent was that the term included a very broad range of groups that were somehow eligible for Federal programs. Mr. Monroe concurred that the intent of the drafters was to recognize those Indian Tribes that had been disenfranchised in the 1950s. Dr. Walker pointed out that it was also important to not make the definition overly broad so that anyone who received health care services from a Federal agency could make a claim. Dr. McKeown pointed out that in one of the earlier versions of the bill the term was defined with a reference to the American Indian Self-Determination Act. In the final statute the reference was replaced with the verbatim text from the Self-Determination Act. The important point is that at the time the statute was passed Congress knew that the concept of Indian Tribe in the Self-Determination Act was being interpreted to mean only those groups recognized as eligible for Federal services by the Bureau of Indian Affairs.

Mr. Monroe asked Mr. Trope, a member of the public, to address the issue. Mr. Trope indicated that he had represented the Association of American Indian Affairs during negotiations prior to passage of the statute. He stated that the definition had been left ambiguous because detailed explication of the many issues involved would have probably killed passage of the bill. From his perspective, non-BIA recognized groups that had received services from other Federal agencies, like the Administration for Native American, should probably be included. Individuals receiving health benefits would not be included. He predicted, however, that much of the discussion was moot because the Department of the Interior Solicitor would probably propose the narrowest possible definition based on the philosophy that the term "Indian Tribe" is applied in many other areas. He questioned how the Committee would want to deal with this situation.

Human Remains

Dr. Sullivan raised the issue of the definition of human remains. He explained that some objects with diverse purposes have been made from teeth or bones and should be exempted from this category. Dr. Haas offered examples of a necklace of drilled teeth and human hair that had been incorporated into a doll or weavings. Dr. Sullivan proposed a distinction between teeth or hair which had been "harvested" from a living person and the later use of parts taken from a dead person. Dr. Haas wondered to whom scalps should be returned. Ms. Naranjo suggested that both the teeth necklace and scalps should be considered human remains. She suggested that objects such as a scalp shirt should be repatriated to the maker's people since it is possible to identify them and, in many instances, the scalp has taken on an important role in the ceremonies of that group. Ms. Craig disagreed, thinking the scalp still belonged to the deceased individual and should go back to his people. Dr. Walker recalled that during one of the Congressional hearings the Antique Tribal Art Dealers Association had brought up the issue of scalps but that their points seemed to have had little effect on Congress. At this point Mr. Monroe asked if Jack Trope could again be recognized.

Mr. Trope remembered that the issue of finger bone necklaces had come up during the negotiations and it was clear at the time that there was no way Congress was going to exclude them. The Antique Tribal Art Dealers Association had raised the issue, but their perspective was disregarded. Concerns raised regarding human teeth and hair are part of a legitimate gray area which was not discussed. Mr. Trope

then suggested that this was an area where the Native Americans on the Committee -- Mr. Tallbull, Ms. Naranjo, and Ms. Craig -- will have to provide a lot of guidance. Concerning the "right of possession" to human remains, Mr. Trope stated that the only application of the concept was in the trafficking provisions. If a museum has human remains, and they are culturally affiliated, they must be returned.

Associated Funerary Objects

Dr. Sullivan commented that the second part of the definition -- cultural items "exclusively made for burial purposes or to contain human remains" -- is very vague. Dr. Haas raised the issue of "burial moccasins" that are commonly believed to have been made exclusively for burial but, when examined, reveal wear patterns on the bottoms. Dr. Sullivan questioned whether the groom's plaque and bride's robe (Hopi?), which are supposed to be interred with them upon their death, would be included. Dr. McKeown raised the issue of ceremonially "killed" pots, which Dr. Haas rejected since he could show in some cases such pots do not occur in burial contexts.

Sacred Objects

Dr. Haas raised the issue of whether objects needed to renew ceremonies should be included in the definition. He recalled that the sentence dealing with that type of objects had deliberately been taken out of the statute. Dr. McManamon indicated that the language in the definition had been taken from the Senate Committee report. Dr. Sullivan suggested that the term be rewritten to recognize only those situations where a ceremony could not be renewed because a necessary object was in a museum. Mr. Trope commented from the audience that his recollection was that objects needed to renew ceremonies were to be considered sacred objects. The key part of the definition was that there had to be present-day adherents to the religion.

Scope of the Summary

Mr. Monroe raised the issue of exactly what items must be included in the summaries. Quoting from Section 6 of the statute, he said it appeared that the summary should present information on just the unassociated funerary objects, sacred objects, and objects of cultural patrimony in a museum's collection. This was not the drafters' intent. Their intent had been for museums to communicate to the Tribes, in a simple narrative form, broad categories of objects within their collections. This approach was chosen because museums are generally not in a position to determine what is a sacred object or what is an object of cultural patrimony. Further dialogue between the museum and particular Indian Tribes would then identify particular sacred objects and objects of cultural patrimony. This point must be resolved as few museums can or should identify sacred objects or objects of cultural patrimony.

Dr. Haas concurred that some of the statutory language appeared to indicate the summaries would only include unassociated funerary objects, sacred objects, and objects of cultural patrimony. He then proceeded to give two examples of why this approach was not appropriate. The Field Museum repatriated some objects to the Blood Tribe of Canada. The museum had looked through the catalogue of its collection and noted pipes, flutes, bowls, baskets, bags, and a variety of other items as objects of possible interest to the Tribe. The museum also noted objects designated "sacred fawn skins". When the two Blood religious leaders came to the museum, they paid no attention to the fawn skins, picking out instead some very small bundles that had been listed as "bags of buffalo stones". They prayed over the bundles

for approximately ten minutes. When museum officials asked about the bundles, the Blood leaders replied they were not going to tell the museum, because they were not supposed to know. The Blood leaders also selected a metal rifle barrel that had been made into a flute. It turned out to be a very important item for certain ceremonies and one of only two known in all Blood material culture. The leaders also choose one bowl from the thirty in the collection. The bowl was a berry bowl necessary for certain ceremonies.

Dr. Haas' second example concerned the Iroquois. The Field Museum knew that the Iroquois were interested in the masks in its collection. When the Iroquois arrived, they also asked to see peach pit games, which the museum had not identified as sacred. The Iroquois were not concerned with turtle rattles, which the Museum understood to be of religious significance, and recommended that they be kept on display. However, two months later, the Tribe wrote back and said that they had talked it over and would like the turtle rattles removed from display.

Dr. Haas summarized that in general the Tribes do not want museums determining what are sacred objects and what are objects of cultural patrimony. They want to know what a museum has, they want to look at the collection, and then they want to return and identify the particular objects they are concerned about. Anything else will ensure mistrust between museums and Indian Tribes.

Dr. Sullivan concurred that the intent of the statute was to get information exchanged. He identified the second sentence of Section 6, paragraph (a) of the statute to support this approach for dealing with sacred objects and objects of cultural patrimony. Unassociated funerary objects might have to be dealt with differently. Dr. Haas disagreed that unassociated funerary objects should be dealt with differently, citing as example an Iroquois visit to the Field Museum when religious leaders were able to identify a particular pipe which is not found outside a funerary context.

Summary Notification

Dr. Haas raised the issue of various levels of specificity within summaries. He cited as example a request the Field Museum had received for information on materials from the Northern Rio Grande Pueblos. The museum responded that it had the following materials from particular pueblos. In addition, the following materials came from "New Mexican pueblos", and the following materials came from "New Mexico". On the other hand, he continued, nearly all of the museum's Apache material is catalogued simply as "Apache", even though there are ten different Apache groups. Dr. Haas explained that the museum will probably send the same list to all of them.

Ms. Craig stated that it will be very important for museums to include information on when objects were purchased or collected and by whom because Native Alaskans know which villages were visited by particular collectors. Ms. Naranjo added that for Pueblo people, objects made of stone might be of particular importance. Just seeing "stone object" in the summary might peak their interest.

Dr. Sullivan suggested including a sample summary as part of the memorandum. Dr. McKeown suggested that rather than using a specific summary as an example, a generic example might be created. After discussion between Drs. Sullivan, Haas, and Walker, Mr. Monroe, Ms. Naranjo, and Interim Chair Craig, the Committee suggested the following guidelines: Provide as much information as is possible given the available documentation in a museum's possession; provide a summary of collections and existing information; do not make judgments about what are sacred objects and objects of cultural patrimony. Dr.

Haas also suggested being as specific as possible by using terms such as "drum" or "flute", not terms such as "items of personal adornment".

Scope of the Inventory

Dr. McManamon opened discussion by identifying the two reasons behind the current approach. First, it was felt that detailed information on each object would be needed to assist in cultural affiliation determinations. Second, this information would be necessary to ensure all parties have a clear understanding of exactly what is being repatriated and what is being retained by the museum. Dr. Sullivan divided the listing of required information into two categories, information which should be readily available to most museums, and information which may not be available. He raised the question of whether information from the second category should be required since, if it were, it would entail additional studies and costs to museums. Mr. Monroe pointed out limitations imposed by the statute on the kinds of information that can be used for these purposes, i.e., no additional research. Dr. McManamon pointed out that the information in this part of the regulations was an attempt to systematize the requirements so that museums would all provide the same kind of information to the Tribes. Dr. Sullivan and Mr. Monroe pointed out that if the regulatory requirements are such that a grants program is necessary to fully comply and the grant program is not funded, implementation of the law may be stymied.

Dr. Haas pointed out that there are great difficulties in identifying the cultural affiliation of many of the remains currently in museums. Neither the museums nor the Native Americans want to repatriate or have repatriated individuals that are not related to the group receiving the remains. Dr. Haas recounted an example of 72 Blackfeet remains that were held by the Field Museum. After examination, it was determined that 71 were Blackfeet and one was not. Dr. Haas stated that it is an issue of great difficulty, nobody wants to give or receive remains that are not related to the people receiving them. Dr. Walker related an example of a collection from a 3000-year-old California site which included an historic Hispanic burial. Dr. Sullivan summed up the conversation on this point by saying that this kind of additional information is critical to decisions regarding repatriation, but is not appropriate in an inventory.

The general consensus of Drs. Sullivan, Haas and Walker and Mr. Monroe was that there would be relatively few clear identifications of cultural affiliation and that the majority of cases would be more ambiguous, requiring further analyses to verify identifications to the satisfaction of the Tribes and the museums. Dr. McKeown pointed out that there were two ways to proceed: Either require morphological documentation of the remains or not. In the first instance, cultural affiliation will be determined in the majority of cases. In the second, the majority of cases will not be identified as culturally affiliated. Drs. Sullivan, Haas and Walker agreed and stated that the cost of doing the kind of documentation under discussion was high and could only be accomplished with an authorized grant program. Without the grants, most museums will not be able to undertake that kind of work. Indian Tribes will also not be able, or in some cases willing, to receive unidentified remains because they will not know if the remains are related to them.

Dr. Sullivan recounted that the Heard Museum had attempted to repatriate 19 cremation jars to the Gila River Indian community. Two of the jars were found to contain remains of a person much younger than the five to eight hundred-year-old jars. A third jar contained the remains of a bighorn sheep. The Gila River community was willing to take responsibility for reinterring all of the human remains. Consultation

between the community and the museum revealed information about the collections and the attitudes of the Gila River community.

Dr. McManamon raised the issue of data requirements and proposed inclusion of the required and optional sections. He explained that the central issue was to ensure that the remains go back to the appropriate group while allowing the consideration of the widest spectrum of data. He also pointed out that because the memorandum represented guidance and not regulations, all the language needed to be conditional. Mr. Monroe urged using the phrase "strongly encouraged" throughout the memorandum. Ms. Naranjo concurred. Dr. McManamon continued that the first cut is to be made with "available" information. Decisions would then be made in consultation with the culturally affiliated Indian Tribes as to what further steps were necessary, appropriate, and agreed to by both parties.

Format Requirements

Dr. Haas raised the issue of the computer format requirements, stating that most, if not all, of the smaller museums do not have computers. Many smaller museums will not even understand what an ASCII format is.

Flowchart of Determination of Cultural Affiliation Process.

Discussion then moved to the flow chart attached to the Memorandum as Attachment 1. Several Committee members indicated the chart was difficult to read. Ms. Naranjo felt that it was too confusing and urged that it be removed. Dr. McManamon stated he felt it was needed for those people who would use charts like this. Dr. McManamon offered to put a warning label on the chart cautioning users about the difficulties of using it. Several suggestions for changes were made to make it clearer. Mr. Monroe suggested removing any references to the rare cases where Europeans were adopted into Indian Tribes and Dr. McManamon agreed.

The Committee then discussed what steps they could take to facilitate the approval process for the memorandum. After a short discussion, the Committee unanimously approved the content and intent of the memorandum and indicated that clear mention in the minutes would be satisfactory.

Draft Regulations

Dr. McManamon was asked to outline the necessary steps for the promulgation of the proposed regulations. He indicated that a number of written comments had already been received on Draft 3. He invited the Committee to make their recommendations. Following the Committee meeting, a revised Draft 4 would be developed. This Draft would initially be reviewed by the Department of the Interior's Office of the Solicitor, probably by Mr. Lars Hanslin, a very experienced lawyer in that office, and then forwarded to the Committee for consideration at their next meeting. Once the Committee agrees, steps would be taken to publish proposed regulations in the *Federal Register*.

Mr. Monroe asked if he could see the written comments and the results of the Solicitor's review as soon as possible. Dr. Walker seconded that request, adding that he understood that the Solicitor's changes would be hard to oppose.

Mr. Monroe asked which issues the Solicitor wanted to address. Dr. McManamon thought they would include the definitions of Indian Tribe, museum, tribal land, and right of possession. Dr. Haas suggested that the penalty section would also need the Solicitor's review. Dr. McManamon agreed and Dr. McKeown added that the criminal penalties would not be included in the regulations as Department of Justice has jurisdiction.

Dr. McManamon proposed a schedule to complete Draft 4 by the end of September for discussion with the Committee at the next meeting in November. Mr. Monroe stated that he felt the situation was more urgent than that. He proposed that the Committee work on the existing draft and have the next meeting in early October. Mr. Monroe also urged that the meeting be moved to occupy part of the weekend because the Committee members had many other duties and needed the extra weekday.

Dr. Haas asked that the location be chosen to encourage public participation, especially by Native Americans. Ms. Craig commented that she thought it would be necessary to provide better notification. Dr. McKeown explained he had worked through the Colorado State Indian Commission to notify every Indian Tribe in Colorado of the meeting. Mr. Monroe suggested that it would be better to contact the groups directly. Ms. Craig stated that you can invite Indian people, but you cannot be sure that they will come.

Cultural Affiliation

Dr. McManamon mentioned that one of the central comments concerned the process and the information requirements for determining cultural affiliation. Dr. Walker indicated his unease with the statutory definition of cultural affiliation. He had particular trouble with the emphasis on biological kinship determination (i.e., based on osteological examinations). Some groups adopted people of different ancestry as a common practice. Biological identity and cultural identity are very different. Ms. Naranjo stated that in Pueblo society, biological identity was most important. Cultural experience was secondary to birth in determining membership.

Dr. Walker discussed the nature of culture as defined in anthropological terms and stated that most decisions on cultural affiliation would be made by people with anthropological backgrounds. Mr. Monroe challenged Dr. Walker's statement. After Dr. Walker clarified the types of institutions he was including, both agreed that the majority would have an anthropologist on staff. Dr. Sullivan pointed out that the definition of cultural affiliation used in the statute is somewhat different from the classical anthropological definition. The statute uses the term to define who has the right to make a claim for an object. Dr. McManamon referred the members of the Committee back to the definitions in Draft 3 which require the existence of a shared group identity between a present day Indian Tribe or Native Hawaiian organization and an identifiable past group. Dr. Walker highlighted the difficulty in this task.

Dr. McKeown pointed out that the first step was to determine if the human remains or cultural objects were Native American. Only after that question was answered would cultural affiliation come into play. The Committee will be required to recommend disposition for unaffiliated remains, even if no determination of cultural affiliation has been made. Dr. Haas and Mr. Monroe asked where this process might lead. Dr. McManamon responded that the regulations only specified the kind of information that must be included in the inventory not how the determination of cultural affiliation was to be done. Dr. Sullivan referred to a comment on Draft 3 as an example of clearer language for describing this kind of

information and urged the staff to adopt a similarly structured approach. Dr. Sullivan then asked for clarification of the statement in the Draft 3 on how cultural affiliation is established. Dr. McKeown explained that the three categories were to encompass biological data (i.e., osteological data), cultural data (i.e., archeological and anthropological data), and a category to encompass history, folklore and other similar kinds of evidence enumerated in the law.

Dr. Haas suggested the Committee disregard the draft regulation sections concerning determination of cultural affiliation at this point in their deliberations and reformat the section of the memo to include the relevant portions of the regulations without wholesale incorporation of the regulations' language. Dr. Walker suggested dividing the section into three problems to be solved: 1) what documentation was available to the museum for making determinations of cultural affiliation; 2) what was the nature of the object in question; and 3) what information was available to the Tribe.

Mr. Monroe suggested that there was very little chance that guidelines could be created to cover all cases. He urged keeping the procedures as simple as possible. Dr. Walker reminded the Committee that the statute required museums to use existing information and that preponderance of evidence was the statutorily defined standard. Dr. McManamon suggested that the object itself would serve as the documentation. Dr. Haas pointed out that there was always the option of determining an object to be unaffiliated if the existing information is not adequate. Many cases may come down to that.

Civil Penalties

Mr. Monroe asked where the section on civil penalties had originated. Dr. McKeown stated that he had three considerations, having to do with legal definitions of value, in mind when he wrote this section: 1) archeological value; 2) historic value; and 3) commercial value. Dr. Haas asked about the potential loss of Federal funds by non-complying institutions, indicating that this penalty was very light in some cases and extreme in others. He also stated that the statute's framers had explicitly excluded the loss of Federal funds from possible penalties. Mr. Monroe questioned how to create a section that had enough teeth to discourage violation of the statute. Dr. Haas mentioned the strong penalties associated with the Archaeological Resources Protection Act (ARPA). Dr. McManamon agreed that this was the case. Dr. McManamon then stated that ARPA had been used as a model for this section, but that he was open to different approaches. He also explained that the NAGPRA staff had used the Rare & Endangered Species Act as a model for civil penalties. Dr. Haas questioned the use of "commercial value" in determining civil penalties asking if, for instance, there was a legal market for eagle feathers.

Dispute Resolution Procedures

Dr. McManamon explained that a request had been received from *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*, a Native Hawaiian organization recognized by the statute, for the Committee to review a dispute. Dr. McManamon summarized the situation to date, emphasizing that the Review Committee needed to first consider procedures for handling such disputes. Second, he suggested that the Committee decide whether to review this dispute now or to postpone the consideration until either further data are available or until procedures are in place. Dr. Sullivan suggested a formal notification process for all parties in a dispute. He also suggested that all parties should have an opportunity to submit documentation to the Committee and were entitled to see the information submitted by other parties. Dr. Haas noted that minimum time frames needed to be established to allow parties to respond to any requests for information or to send

representatives to Committee meetings. Dr. Walker pointed out that if all parties were allowed plenty of time to consult then solutions might be found before it became necessary for the Committee to intervene.

Mr. Monroe outlined a possible dispute resolution process which was then discussed. The Committee agreed to a two-part procedure. A request to review a dispute would first be received by the DCA. He would consult the Chair and together they would determine if the Committee should consider the dispute. If not, then a letter would be sent to the requesting party explaining the decision. If a decision was reached to accept the dispute for consideration, then letters would be sent to all parties to the dispute asking for written statements outlining their understanding of the issues and requesting the identity of other parties that might have an interest in the dispute. The Committee would then review the dispute at a regularly scheduled meeting and make a recommendation to the disputing parties. If, after working through the proposed solutions, the parties could not come to an agreement, they could resubmit the dispute to the Committee. After deciding if the dispute should be reconsidered, the Committee might rehear the issues at a regularly scheduled meeting and issue a finding.

The majority of discussion concerned how the Committee would determine which parties should be considered. It was decided that identifying the parties was the responsibility of the museums and the Indian Tribes. While the Committee should ask if there were other parties with potential interest, it was not their job to seek these parties out.

Timing the receipt of disputes and scheduling them for consideration by the sitting Review Committee was extensively discussed and a cutoff date of 30 days before a regularly scheduled meeting was adopted. The Committee agreed that they needed time to fully consider the materials submitted in any dispute.

Election of the Committee Chair

Dr. Haas expressed the opinion that the Committee needed an Indian voice to lead it. Much of the Committee's future work would be in the resolution of disputes and he felt the Committee needed a Native American's view to guide it. Ms. Naranjo disagreed, suggesting that the duties of the Chair should include a practical, common sense approach to facilitating the meetings, keeping things simple and moving things along. She stated that she thought that a Native American viewpoint was not necessary and suggested Mr. Monroe. Mr. Monroe agreed with Ms. Naranjo's position, but indicated that he felt that he could not devote the time necessary to the position. Ms. Craig offered her support for Ms. Naranjo as Chair. Ms. Naranjo stated that she wanted to withdraw from consideration for the first term. Mr. Monroe suggested that if Ms. Naranjo was currently unwilling to serve the Committee could elect an Interim Chair and she could re-consider the position at the next meeting. The Committee then selected Ms. Craig as Interim Chair.

Next Meeting

Ms. Craig suggested the Committee consider the time and location of the next meeting. After some discussion, the meeting was scheduled for October 8-10, 1992 in Florida in order to accommodate the Committee's wish to move expeditiously on the proposed regulations and to accommodate members' travel plans.

Public Comment

Dr. Susan Collins, Colorado State Archaeologist and Deputy State Historic Preservation Officer, raised five points for the Review Committee's consideration. Her first issue concerned the identification of Indian Tribal representatives. Dr. Collins indicated this information was generally unavailable and urged publication of a central list of representatives designated by Indian Tribes. Secondly, she inquired whether the Committee was considering a statute of limitations on claims by Indian Tribes and what effect such a limitation might have on the legal status of collections; specifically, was the repatriation effort intended as a one time event or will it be an ongoing process? Related to this issue, Dr. Collins asked if it would be possible for a museum to continue to curate cultural objects if requested by a claiming Tribe. Thirdly, Dr. Collins asked if museums would be required to make judgments concerning the cultural affiliation of Indian Tribes to older archaeological collections. Finally, she requested guidance on the status of ownership of objects originating on tribal lands. Dr. Collins suggested that the link between ownership or cultural affiliation of cultural items may be tenuous and proposed that the regulations needed to expand on these issues. Dr. Collins also raised the issue of coordination between Section 106 of the NHPA review and the NAGPRA process. She asked the Committee to provide guidance on this issue as quickly as possible, because a consistency problem was already surfacing as different Federal agencies went in entirely different directions. Dr. McManamon stated that would be covered in Draft 4 as a result of comments received on Draft 3. Dr. Collins further suggested the utilization of state Indian Commissions in the consultation process.

Dr. Alan Downer, the Navajo Nation Historic Preservation Officer, stated that he believed the Navajo position on the reburial of hereditary enemies on Navajo land and the burial of Navajos on enemy land was quite clear. The Navajo wanted the burials reinterred as soon as possible and he speculated that the Hopi would feel the same way. Dr. Downer then pointed out that he disagreed with Dr. Haas's contention that repatriation was the primary goal of the statute. Dr. Downer stated that the law and its regulations have significant consequences for management on Federal and Tribal lands. He suggested that procedures for Federal and Tribal lands should be separated out in the regulations because of the great differences in the management of the two classes of lands. He then strongly urged the Committee to continue to refer back to the statute for regulatory language. Mr. Monroe asked Dr. Downer what specific issue he was referring to. Dr. Downer responded that he was worried about the issue of Tribal sovereignty over archeological sites on Tribal land when another group could demonstrate by a preponderance of the evidence that they had a connection with the sites.

Dr. Brit Storey of the Bureau of Reclamation, outlined the difficulties Federal agencies are having in identifying the museums holding their collections. Many museums are unaware of which artifacts belong to the Federal Government as the artifacts cannot be related to their points of origin until the records are traced. Dr. Walker responded by questioning whether cultural objects from Federal lands that are currently in the Smithsonian were covered by the National Museum of the American Indian Act (NMAIA) or NAGPRA. Lastly, Dr. Storey cautioned the Review Committee that if the 30-day shutdown period (after inadvertent discoveries of human remains or cultural items) was allowed to stand, field people would stop reporting discoveries.

Mr. Edward Natay of the National Park Service, Southwest Regional Office, urged the Committee to consider fostering face-to-face contact between museums and Indian Tribes. Some Indian Tribes have strong historic preservation programs, but those Tribes which do not may be unable to respond to just a letter of notification. Even those Tribes with historic preservation programs may have problems representing the views of all the people of the Tribe. He emphasized again that direct, face-to-face contact

was important to successfully comply with NAGPRA. As a second point, Mr. Natay urged the Committee to consider that many Indian Tribe officials are only in office for a year. Decisions to claim or not to claim human remains and cultural items may be reversed with a new government. Mr. Natay raised the issue of Indian Tribes laying ancestral claim to pottery discovered over a broad geographic area. He cited the example of an agreement between Mesa Verde National Park and the Zuni and Hopi Tribes in which the Indian Tribes claim the Anasazi inhabitants of that area as ancestors. Ms. Naranjo asked Mr. Natay to talk about the relations between the Pueblos and the Anasazi ruins in and around the Navajo Reservation. Mr. Natay replied that some Pueblo groups are ready to deal with this issue and some are not. He urged the Committee to take this situation into account when devising methods for handling repatriation requests, particularly when devising a statute of limitations. Dr. Haas asked Mr. Natay for some specific recommendations as applied to his situation: 200 groups to contact and a very small staff to handle the task. Mr. Natay reiterated his suggestion that personal contact was the best approach.

Dr. Jane Day of the Denver Museum of Natural History asked what had happened to the Grants program authorized in NAGPRA. Dr. McManamon replied that there had been no appropriation of funds to cover this program in the FY '93 budget. The Committee then discussed practical methods of attempting to convince Congress to appropriate funds.

After closing statements, including a "Good Saying" by Ms. Naranjo in her native Tewa, Interim Chair Craig adjourned the meeting at 3:25 pm August 28, 1992.

Approved:

_____[SIGNED TESSIE NARANJO]_____
Tessie Naranjo, Chair
Native American Graves Protection
and Repatriation Review Committee

_____03/28/93_____
Date